IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

CRL.A.No. 1440 of 2004(C)

SC.662/2001 ON THE FILE OF THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE (AD HOC) FAST TRACK COURT II, PATHANAMTHITTA.
(C.P.89/2001 OF THE JUDICIAL I CLASS MAGISTRATE'S COURT, ADOOR)

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APPELLANT: ACCUSED:

SUJATHA, D/O. BHARATHI,
RAJEEV BHAVANAM VEEDU, PANNIVELICKAL DESOM,
KURAMPALA VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.K.SAJEEV

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON 14/12/2006 DELIVERED THE FOLLOWING:

Crl.M.A.Nos.10117/2004 in Crl.A.1440/2004

Dismissed.

14-12-2006

Sd/-K.Thankappan,
Judge.

K.Thankappan, J.

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Crl. A. No. 1440 of 2004

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Dated this the 14th December, 2006

JUDMENT

Appellant, accused in S.C.No.662/2001 on the file of the Court of the Addl. District and Sessions Judge, (Adhoc) Fast Track Court II, Pathanamthitta, was charge-sheeted for the offences punishable under section 8(1) and (2) and 55(a) of the Abkari Act. The prosecution case against the appellant is that on 30-11-1999 at about 11.45 A.M she was found in possession five litres of arrack. To prove the charge against the appellant, the prosecution examined PW1 to PW6 and Exts.P1 to P8 were produced. Material objects MO1 and MO2 were also produced. On the side of the defence, DW1 was examined. When the appellant was questioned under section 313 of Cr.P.C., she denied the allegation levelled against her and stated that she was falsely implicated in the case. Relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offences punishable under section 8 (2) of the the Abkari Act and she was convicted thereunder and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for a period of

one month. The above conviction and sentence are under challenge in this appeal.

2. This Court head the learned counsel for the appellant and the learned Public Prosecutor.

3. Learned counsel for the appellant submits that the conviction entered and sentence awarded against the appellant are not sustainable on two grounds; (i) the trial court went wrong in placing much reliance on the evidence of PW1 and PW2 and (ii) even if the evidence adduced by the prosecution is accepted, the prosecution has failed to prove the true version of the prosecution case.

4. The learned Public Prosecutor submits that the trial court has rightly accepted the evidence of PW1, PW2, PW4, PW5 and PW6 and found the appellant guilty of the offence.

5. Question to be answered in this appeal is whether the trial court was justified in accepting the evidence of PW1 and PW2 to find the appellant guilty of the offences charged against her?

6. To prove the prosecution case against the appellant, the prosecution mainly relied on the evidence of PW1 and PW2 Excise Guards. They accompanied CW1 Preventive Officer who detected the offence. CW1 was not examined, as she expired before the trial. The

evidence of PW1 and PW2 would show that on 30-11-1999 at about 11.45 A.M. while they were on patrol duty along with CW1 and when they reached at Panniveli Junction in Kurampala Village, they found the appellant entering the road from a ridge of the paddy field situated on the western side of Panniveli Junction carrying a 10 litre black can. These witnesses further stated that CW1 checked the can and found that it contained about five litres of arrack. Sample was collected at the spot and the remaining content in the can as well as the sample bottle was sealed and labelled after preparing Ext.P1 mahazar. These witnesses stated that CW1 arrested the appellant at the spot and obtained the signature of the relative of the appellant in the arrest memo. Ext.P7 chemical analysis report would show that the ample contained 31.56% ethyl alcohol by volume. After considering the evidence adduced by the prosecution, the trial court found the appellant guilty of the offence punishable under section 8(2) of the Abkari Act.

7. The specific case in Ext.P1 with regard to the scene of occurrence is the paddy field situated on the western side of Panniveli Junction in Kurampala Village. When DW1 was examined, he stated that appellant was arrested from her house as claimed by the appellant in her statement under section 313 Cr.P.C. Only because of the difference in the place of

occurrence stated by DW1 this Court cannot brush aside the prosecution case. But it is seen that the appellant had set up her case from the beginning that the Excise officials have taken MO1 can from the nearby paddy filed and the appellant was arrested from the junction and she was taken in the jeep and on the way PW3 and PW4 signed Ext.P1 mahazar as per the request of the Excise officials. It is relevant to note that in cross-examination PW1 had stated that Ext.P1 mahazar was written by CW1 in his own handwriting, but PW2 had sated that it was written in the hand writing of Excise Guard by name Babu. It can be seen that when the appellant was questioned under section 313 Cr.P.C. her definite case is that she was not arrested from the spot as alleged by the prosecution. Apart from the above, it has come out in evidence that when the appellant, the contraband article and the sample were produced before PW5, she prepared Ext.P2 occurrence report and Ext.P4 thondi list. In Ext.P2 there is no mention about the seal and label on MO1 can, but at the same time in Ext.P4 thondi list it is mentioned that MO1 was sealed and labelled. This is not a serious aspect affecting the merits of the prosecution case. But with regard to the case set up by the appellant that MO1 was not recovered from her, the above difference assumes relevancy. The evidence of PW1 and PW2 create doubt regarding arrest of the appellant and the place of

occurrence. PW1 had a definite case that all the Excise party went to the house of the appellant and that the husband of the appellant was not there. But PW2 had stated that nobody had gone to the house of the appellant. All these circumstances create doubt regarding the place of occurrence and the seizure of MO1 and the arrest of the appellant. Hence the benefit of doubt has to be given to the appellant.

8. Next point to be considered is with regard to the evidence of PW3 and PW4 who were examined as independent witnesses. They are not supporting the prosecution case. PW3 denies his signature in Ext.P1. PW4 stated that appellant was arrested from the junction and she was taken in the jeep and on the way he signed Ext.P1 mahazar as per the request of the Excise officials. In this context the evidence given by DW1 is relevant. DW1 has a definite case that he saw the appellant was taken by the Excise official from the junction.

9. Hence, on an over all appreciation of the evidence, this Court is of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt.

10. It is relevant to note that the trial court ought to have discussed the evidence of PW1 and PW2 separately, especially the trend of the cross-examination of these witnesses requires such discussion and analysis of the

evidence. Instead the trial court only discussed the evidence of these witnesses together and came to the conclusions that the appellant was found guilty of the offence.

11. In the above circumstances, this Court is of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. Hence, the benefit of doubt can be given to the appellant. Therefore, the conviction and sentence awarded against the appellant in S.C. No.662/2001 on the file of the Court of the Addl. District and Sessions Judge (Adhoc) Fast Track Court II, Pathanamthitta are hereby set aside and the appellant is acquitted. The bail bond of the appellant shall stand cancelled.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 1440/2004

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Judgment

14-12-2006